91-1950

Supreme Court, U.S.
FILED
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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

IN re: Marriage of Ruth M. Hopkins and

THOMAS C HOPKINS,

PETITIONER,

VS.

EDWARD G. SCHAUMBERG III

RESPONDENT

FOR APPEAL

TO THE UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI

THOMAS C HOPKINS, pro-se Litigant
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QUESTIONS PRESENTED

1- Do certain Court Costs such as:

A- Docket fee's listed under Rules for The Supreme Court Of The United States, Rule 38, pursuant to 28 U.S.C § 1911, (A) (b) constitute a violation of civil rights under The United States Constitution, Article XIV, Section 1.. [as it pertains to "equal protection of the laws"] and Article 1. (Amendment 1 to The Constitution) [as it pertains to the "freedom of speech"] (see appendix , I , and G, this Petition)

If so declared unconstitutional, would this also apply to all the States?

2- Does The Supreme Court Of The United States Rule 39, proceeding in forma pauperis, constitute a violation of civil rights under The United States

Constitution, Amendments to The Constitution, Article IV. [as it pertains to secure in their "papers and effects"] (see appendix H andJ , this Petition)

3- Should The United States District Courts have jurisdiction "over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional" ? (see appendix A and B, this Petition) This question is directed at the civil rights of children that move from one state to another.

4- Do the States have jurisdictional conflict when it comes to the exercise of authority by a Guardian ad Litem from one state to another and should this be considered a Federal jurisdictional matter?

5- Do the Rules of The Supreme Court of The United States: Rule 33 (.7) violate Article I, [as it may apply to "THE FREEDOM OF SPEECH" and the freedom of expression that is implied. (see appendix I, this Petition)

Should HAINES V. KERNER, 404 U.S. at 520-21, have any relevance to Rule 33 (.1) (see appendix B, this Petition)

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4- The Constitution of The United States, Amendment to The Constitution, Article 1. Set forth in Appendix I.

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NO._____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1991

IN re: Marriage of Ruth M. Hopkins and

THOMAS C HOPKINS, PETITIONER

VS.

EDWARD G. SCHAUMBERG III, RESPONDENT

FOR APPEAL

TO THE UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

The Petitioner, named herein, Thomas C. Hopkins, respectfully requests that a Writ of Certiorari be issued to review

the judgment and opinion of The United States Court of Appeals For The Tenth Circuit for dismissing the appeal for lack of subject matter jurisdiction and for this Court to use it's discretionary power to review the important Constitutional questions being brought forth.

OPINIONS BELOW

The opinion of The United States Court of Appeals For The Tenth Circuit is quoting District of Columbia of Appeals V. Feldman, 460 U.S. 462, 486 (1983) and Facio V. Jones, 929 F.2d 541, 543 (10th Cir. 1991); 28 U.S.C. § 1257, and appears in appendix A of this Petition.

The opinion of The United States District Court For The District of Colorado, quotes Haines V. Kerner, 404

U.S. 519, 520-21 (1972). Estelle V. Gamble, 429 U.S. 97, 106 (1976). Scheuer V. Rhodes, 416 U.S. 232, 236 (1974). Conley V. Gibson, 355 U.S. 41, 45-46 (1957). District of Columbia Court of Appeals V. Feldman, 460 U.S. 462, 486 (1983). Anderson V. Colorado, 793 F.2d 262, 263 (10th Cir. 1986) (citations omitted). Van Sickle V. Holloway, 791 F.2d 1431, n.5 (10th Cir.1986) (quoting Haggard V. Tennessee, 421 F.2d 1384, 1386 (6th Cir. 1970). Razatos V.Colorado Supreme Court, 746 F.2d 1429, 1432 (10th Cir. 1984)..This can be found in this Petition, appendix B.

JURISDICTION

Re: Question # 4

A Federal jurisdiction is, or should be involked in this matter, because it

involves an unprotected third party in a dispute. A child taken across a state line, from Colorado to Wyoming. (see appendix F) A Guardian ad Litem was appointed by the Arapahoe County District Court Division 11, State of Colorado. The Guardian ad Litem neglected to contact his client, Child for seven (7) months, thus leaving her virtually, legally unprotected in another state for seven months. The State District Court excuses the Guardian ad Litem's behavior by stating: "Mr. Schaumberg was unable to see the minor child for a period of time due to the distance of the Petitioner". (see appendix F , page 2) It is questionable what authority an appointed, Colorado Guardian ad Litem would have in the State of Wyoming or in any other state.

Where a state does not apply it's own intra-state Rule to inter-state

practice. It is therefore reluctant to jurisdiction.

Quoting Bacher V. District Court, 186 Colo. 314, 527 P.2d 56 (1974) [Attorney should pratice in county of child's residence] (see appendix K , this Petition)

It is clear that a potential, jurisdictional conflict between the states can and sometimes does exist in regard to legal rights of children across state lines. I believe that my case has illustrated how a State District Court and a Guardian ad Litem are reluctant to move in the best interest of a child when ever there is another state jurisdiction involved. Therefore, on behalf of all the "kids" that may fall victim to this scenario, I would beg the Court to invoke Amendment XIV, as it applies to equal protection of the law.

STATEMENT OF THE CASE

This matter comes on from appeal to The United States Court Of Appeals For The Tenth Circuit, no. 91-1351, dismissed February 7, 1992, under Fed. R Civ. P 12(h) (3) for lack of subject jurisdiction; before MOORE, TACHA AND BROBY, Circuit Judges, and on from appeal from The United States District Court, District of Colorado, 91-F-1669, dismissed September 25, 1991, under Fed. R. Civ. P. 12(h) (3) for lack of subject matter jurisdiction; Sherman G. Finesilver, Chief Judge. This came on from appeal to The Supreme Court, State of Colorado, Petition for Writ of Certiorari, denied September 10, 1991, for refusal to pay docket fee; Colorado Court of Appeals case number, 91CA1186. The original matter came before the Arapahoe County District Court, Colorado case no. 84DR690, Open

Court Hearing, on Respondent's motion, objection to the legal fee of the Guardian ad Litem, Edward G. Schaumberg III., Attorney at Law, July 3, 1991, Joyce S. Steinhardt presiding; appealed July 22, 1991 to The Colorado Court of Appeals.

This matter began in a state district court as a dispute over whether or not a Guardian ad Litem was entitled to his legal fee, when he had NOT, made any initial contact, with his client, (child) for (7) months. The child in question is my Daughter, who had been taken to live in another state by her Mother, the custodial Parent. (see appendix F., in this Petition) The issue lost it's focus, when The Colorado Court Of Appeals and The Colorado Supreme Court refused a hearing of the evidence, without first receiving a docket fee. (see appendix C, D, E, in this Petition)

The Petitioner has been denied his

right to an appeal, because of his belief that the court docket fee and other court costs being forced upon him and the people of Colorado, is UNCONSTITUTIONAL, under The United States Constitution, Amendments to The Constitution, Article XIV, Section I, and Article IX. (see appendix G and H in this Petition)

It is also the Petitioner's belief that the Rules of this Honorable Supreme Court are UNCONSTITUTIONAL, as to Rule 38, pursuant to 28 U.S.C. §1911,(A) (b)and Rule 39(.1)proceedings in forma pauperis.

Further, when the Clerk of The Supreme Court OF The United States, returns Writ of Certiorari to the Petitioner for failure to meet content requirements under Rule 14 and 33, he violates the civil rights of the Petitioner. There should not be any requirement or mandate to conformity,

that can be construed to restrict the creative expression of the individual. Such a restriction violates Article I, as it pertains to "The Freedom of Speech" and the freedom of expression that is implied. (see question # 5 and appendix , I and J, this Petition)

REASONS FOR GRANTING THE WRIT

Re: Question # 1:

1- The Petitioner is of the belief, that he is not receiving "equal protection of the laws", as stated in Article Fourteen, by being forced to pay a docket fee, in order to access the Legal System. The point that I have been trying to express to The Colorado Supreme Court and now to this Court, is that only the Rich or economically, well-off, individuals have easy, uninhibited, access

to our Legal System, in said civil matters. The majority of us (in this case, pro-se Litigant) are confronted and deterred with barriers of unconscionable court costs. Perhaps the question to ask at this juncture is: In the future, will court fee's be determined by government's ever growing need for additional revenue. In my opinion, the courts should not be in the business of collecting revenues.

To further appreciate what I've been trying to say, one only has to have been Divorced, Bankrupt, without any credit and burdened with large child support obligations. This scenario is becoming increasingly typical in American society. During this period that I have just described, an individual is virtually shutout of the Colorado Appellate. (I believe that this also applies to the Federal courts)

2- If the majority of the people are unable to gain easy and uninhibited access to our Legal System (including Appellate Federal and State) in order to protect their rights, stated in the "bill of rights", and/or The Constitution of The United States, then those rights merely become "window dressing" to the world, without real purpose or meaning. Our American society can only boast to be as strong as the weakest link in the chain.

3- Granted, court fee's have protected the System from those so called frivolous matter's (an opinion of much controversy) that if lifted, may or may not create an even greater burden on the courts. However, in this regard, as stated to The Colorado Supreme Court, "I'm more concerned about how many important, ligitimate, civil matters

that are turned away, or are never heard because of these unconscionable court fees. Most people are not willing to sell their Fourth Amendment rights in declaring themselves in poverty, in order to access the Legal System.(forma Pauperis)

Re: Question # 2

It is the Petitioner's belief and contention, before this Supreme Court of The United States, that any requirement (Federal or State) to the people, to provide an affidavit as to Financial Affairs, in order to access the Legal System (forma pauperis), constitutes an UNWARRANTED INVASION OF PRIVACY, or perhaps more aptly stated, an UNWARRANTED USE OF GOVERNMENTAL DISCRETION. It is also my contention that this Rule, forma pauperis, violates and strikes at the

very Heart and Soul of Amendment IV of The United States Constitution, especially as it applies to: "secure in their papers". It is clear that the government is asking the people to expose their financial Souls to the entire world in order to access the courts or more aptly stated, the Legal System of all the people, that should have equal protection of the law. This is exactly what our Forefather's meant to protect us from when they wrote Amendment IV. (see appendix G and H , this Petition)

Re: Question # 3 and # 4:

1- When the Colorado Appellate dismissed and denied the Appellant's appeal, without a hearing of the evidence, they have also violated the Constitutional rights, under Amendment XIV, of the possible unprotected Party, the Children

of Colorado (or The United states) This was part of the issue before The Colorado Court of Appeals.

The first problem, as I perceive it to be, is the reluctance of a State District Court and a Guardian ad Litem to move in the best interest of a child when it comes to dealing with the jurisdiction of another state.

The second problem that I perceive is that of the message that the State District Court sends to the legal community in the state as well as to the entire nation, when it excuses a Guardian ad Litem and allows him a legal fee for not contacting his child client for seven months. Do the State District Courts appoint Guardian ad Litem's as a formality or for probable cause?

Another point to consider is whether or not a Litigant should be alowed to inadvertently deny an unprotected third

Party, their civil rights, by not paying a docket fee; which doesn't appear to be too equitable for the "Kids" that fall into this scenario.

For the record: Mr Schaumberg was withdrawn by the Court as Guardian ad Litem on January 17, 1991. I would like to emphasize to this Court that either my former wife or I, had requested a Guardian ad Litem to be appointed and I do not perceive any problem to exist with my Daughter that would require being represented by a Guardian ad Litem. She appears to be happy in Wyoming and our relationship has improved over the last two years. Of course, I've missed seeing her more often, because of the distance between us.

Also for the record: Statements to the courts, during the ongoing litigation, of past situations and hypothetical scenarios, are not to be

construed or suggest that this Petitioner is in a state of poverty, as of this writing.

It is important for The Supreme Court to review this issue of the Guardian ad Litem, because I believe it is an area of concern for the child that may require Federal Legislation in the future. Therefore, the opinion of this Court as to jurisdiction is important and needed on this issue.

Re: Question # 3

As stated by The United States Court of Appeals, for The Tenth Circuit, quoting Chief Judge Finesilver of The United States District Court, Colorado:

"[United States district courts do not have jurisdiction ... over challenges to state court decisions in particular cases arising out of judicial proceedings

even if those challenges allege that the state court's action was unconstitutional."

(quoting District of Columbia Court of Appeals V. Feldman, 460 U.S. 486 (1983). Any appeal from a state's highest court must be addressed to The United States Supreme Court. See Facio V. Jones, 929 F.2d 541, 543 (10th Cir); 28 U.S.C. § 1257. (see appendix B, this Petition)

The main concern that the Petitioner, to this Court has, with the above case law is that of the last sentence: "even if those challenges allege that the state court's action was Unconstitutional".

This law has "opened the door" to all kinds of potential abuses and any number of imaginable scenarios brought about by the states in this regard. It appears to me that the Federal Judiciary has been severely handicapped, or more aptly stated, the Federal Judiciary's

power has been usurped to the point where it is now powerless to protect and defend the people, with the United States Constitution. Given the right set of circumstances of demand, there isn't any logical and/or practical way that The Supreme Court of The United States could be expected to address all of the potential issues in a timely manner and still be fulfilling it's obligation to the Constitution.

The relevance of a child crossing a state line is not indicated by the Court or the jurisdiction thereof.

Re: Question # 5

The Petitioner believes that stringent Rules are necessary for this Court and does not want to imply anything to the contrary. (Perhaps the Court could encourage Colorado Branch Libraries to carry the U.S. code and Rules of this

Court) However, I don't believe that applying these Rules to pro-se Litigant's is either fair or just. I must take exception to Rule 14 (.2), that allows the Clerk not to accept any petition that does not conform to Rule 14 and Rule 33. For example: A pro-se Litigant may not have the duplicating facilities to produce 40 copies per document submitted to this Court. (Rule 33 (.1) The non-standard paper size (6 1/8 X 9 1/4) and binder are not carried by any stationery suppliers that I could locate. Therefore, the Writ must be typed on a small portion of letter size paper, duplicated and then cut down to the proper size for this Court. It's obviously this duplicating process that makes it not practical to type on both sides of the page. There are some Environmental conscious people that might take exception to the waste of paper, especially when

one multiplies this by the number of cases in a given period of time.

The cost for these copies is another consideration of court costs and should be reviewed under question 1. Having these Rules apply to pro-se Litigant's, could present an insurmountable deterrent, actually preventing this Court from hearing an important issue and thus a violation of Article I, "Freedom of Speech", (see appendix I) or Article XIV., Equal protection of the laws" (see appendix G and appendix B, HAINES V. KERNER, 404 U.S. at 520-21, this Petition)

CONCLUSION

For many, it is difficult to imagine a world without unconscionable court costs. The costs have been in the system so long, that they have actually become deeply embedded and institutionalized, in both the State and Federal Judiciary. However, this in itself, does not legally or socially justify their existence. The very nature of the docket fee gives credence and support to those, that would argue, that this great country of ours, is slowly becoming insensitive to the less fortunate and needy. That the Great American Society, recognizes only the rights of the Rich and Famous.

This Honorable Supreme Court, has an historical opportunity to re-establish confidence and a greater level of communications, with the American people. A level of communications, that will

be free of inhibiting deterrents and that which will help the courts, to hear from people representing every walk of American life. People, that can represent themselves, if they choose to do so, without obstacles and with new found freedom, which has been rightfully theirs, under the Constitution.

I have begun this process of appeal, with a narrow focus, in a legal fee dispute. I have since grown to realize that perhaps, if there is fault to establish, that a good deal of it should be placed on the system. I have grown in the process to realize, that the system is "dropping the Kids through the cracks" and that I have an opportunity to communicate this fact and to do something about it. In other words, I have expanded my perception of what is really important here and it may not be the recovery of a trivial legal fee. But rather, the

principle of why that fee was awarded, and at what expense. It is intuitive that the Court should protect this Country's most cherished asset, it's children, born as well as unborn.

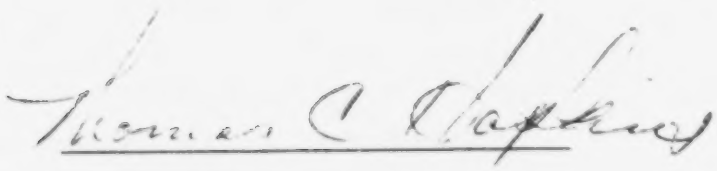
Hopefully, this Honorable Supreme Court of The United States will agree with my arguments, and return the original matter to the appropriate court for hearing. If I have failed to perfect or convince this Court that there is, indeed a Federal jurisdiction, in this Guardian ad Litem issue, (question # 4) then, I am respectfully requesting, that The Supreme Court exercise it's power of discretion, to review the important issues being brought forth in questions 1 ,2, 3, and 5. I believe, that this Court, is the only Court, with the proper authority to address the issues before it.

My relief is therefore dependent

on the review of this Honorable Supreme Court of The United States and I will respectfully await it's decision.

DATED: MAY 6, 1992

RESPECTFULLY SUBMITTED



THOMAS C HOPKINS

PETITIONER, pr-se

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

IN re Marriage of Ruth M. Hopkins and THOMAS C. HOPKINS

Petitioner-Appellant,

V.

EDWARD G. SCHAUMBERG III,

Respondent-Appellee

ORDER AND JUDGMENT*

Before **MOORE, TACHA** and **BRORBY,**

Circuit Judges.

No. 91-1351
(D.C. No. 91-F-1669)
(D. Colo.)
FILED, February 7, 1992

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed.

R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Thomas C. Hopkins, pro-se appellant, appeals the United

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* This order and judgement has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R 36.3.

States District Court's dismissal of his appeal from the Colorado Supreme Court for lack of subject matter jurisdiction.

Mr. Hopkins filed a Petition for Writ of Certiorari in the Colorado Supreme Court which was denied for failure to

pay a docket fee or provide an affidavit concerning his financial affairs as required to proceed in forma pauperis. Next, Mr. Hopkins filed a notice of appeal with the United States District Court for the District of Colorado which was dismissed for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(h)(3). From that dismissal, Mr Hopkins appeals to this court.

Chief Judge Finesilver of the United States District Court for the District of Colorado recognized the court's obligation to view pro-se pleadings by standards less stringent than those governing formal pleadings drafted by attorneys. Cognizant of this liberal standard, the district court stated in it's Order of Dismissal that Mr. Hopkins's complaint was "styled as a notice of appeal' and that "the United States

Supreme Court prohibits federal district courts from reviewing state court judgments." For this reason, the district court dismissed Mr. Hopkins's complaint under Fed. R. Civ. P. 12(h) (3) for lack of subject matter jurisdiction.

Having reviewed de novo the District Court's Order of Dismissal, we agree with the decision and, therefore, will not discuss the merits of the case.

As Chief Judge Finesilver aptly stated in his Order of Dismissal:

"[United States district courts] do not have jurisdiction ... over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional."

(quoting District of Columbia Court of Appeals V Feldman, 460 U.S 462, 486

(1983). Any appeal from a state's highest court must be addressed to the United States Supreme Court. See Facio V. Jones, 929 F.2d 541, 543 (10th Cir. 1991); 28 U.S.C. § 1257.

Therefore, the dismissal of the United States District Court for the District of Colorado is **AFFIRMED.** The mandate shall issue forthwith.

Entered for the Court:

WADE BRORBY

Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 91-F-1669

In re the Marriage of

Ruth M. Hopkins

and

THOMAS C HOPKINS,

Petitioner,

and concerning

Edward G. Schaumberg III,

Respondent.

ORDER OF DISMISSAL

SHERMAN G. FINESILVER, Chief Judge

Thomas C Hopkins has tendered a pro-se complaint styled as a notice of appeal, alleging violations of his rights under the United States Constitution. He seeks to appeal a decision by the Colorado Supreme Court to this court. In the spirit of Haines V. Kerner, 404

U.S. 519, 520-21 (1972), Mr. Hopkins' request to waive the filing fee for appeal will be construed as a motion for leave to proceed without prepayment of fees and costs under 28 U.S.C. § 1915. The motion is granted. The complaint is filed. It will not be served, however. Jurisdiction is not asserted.

In addressing the complaint, we are mindful of Mr. Hopkins' pro-se status and the well-settled rule compelling liberal construction of pleadings by pro-se litigants. Haines V. Kerner, 404 U.S. at 520-21. Consequently, the complaint is held to standards less stringent than those governing a formal pleading drafted by lawyers. Estelle V. Gamble, 429 U.S. 97, 106 (1976); Haines V. Kerner, 404 U.S. at 520 (1972). To dismiss for lack of subject matter jurisdiction or for failure to state a claim, we must assume that the factual

allegations of the complaint are true. All reasonable inferences must be drawn in favor of the pleader. Scheuer V. Rhodes, 416 U.S. 232, 236 (1974). The complaint must stand unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim or claims that would entitle him to relief. Conley V. Gibson, 355 U.S. 41, 45-46 (1957).

Mr. Hopkins seeks for this court to grant appellate review of the Colorado Supreme Court's September 6, 1991, Order denying his request to docket, without a docket fee, the Petition for Writ of Certiorari in Colorado Court of Appeals case No. 91CA1186. The State Supreme Court denied the request because it lacked an affidavit concerning Mr. Hopkins' financial affairs.(see Complaint at September 6, 1991, Order of court.) Apparently, Mr. Hopkins failed to pay

the docket fee when the notice of appeal was filed in the State Appellate Court. (See Complaint at August 2, 1991, Order to show cause). The state action originated in Arapahoe County, Colorado, District Court, case No. 84DR690, in which Mr. Hopkins objects to the legal fees of Edward G. Schaumberg III, the court-appointed Guardian ad Litem representing the Hopkins' minor Daughter, Chrystie M. Hopkins.

This court has no jurisdiction to grant Mr. Hopkins requested relief. The United States Supreme Court prohibits Federal district courts from reviewing state court judgments. "[United States district courts] do not have jurisdiction...over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional."

District of columbia Court of Appeals V. Feldman, 460 U.S. 462, 486 (1983). "[F]ederal district courts are without authority to review state court judgments where the relief sought is in the nature of appellate review." Anderson V. Colorado, 793 F.2d 262, 263 (10th Cir. 1986) (citations omitted). See also Van Sickle V. Holloway, 791 F.2d 1431, 1436 N.5 (10th Cir.1986) (quoting Haggard V. Tennessee, 421 f.2d 1384, 1386 (6th Cir. 1970) (Federal courts have no authority to "direct state courts or their judicial officers in the performance of their duties.");Razatos V. Colorado Supreme Court, 746 F.2d 1429, 1432 (10th Cir. 1984) (a Federal district court has no authority to review state court final judgments) Any such Federal review must be addressed directly from the state's highest court to the United States Supreme Court. Facio V. Jones, 929 F.2d

541 (10th Cir. 1991); 28 U.S.C. § 1257. The complaint, therefore, is dismissed for lack of subject matter jurisdiction. Fed. R. Civ. p 12(h) (3).

ACCORDINGLY, it is ORDERED that:

(1) Plaintiff is granted leave to proceed without prepayment of fees and costs;

(2) The Complaint is dismissed under Fed. R. Civ. P.12(h) (3) for lack of subject matter jurisdiction;

(3) The Complaint and the action are dismissed.

DATED at Denver, Colorado, this 24th day of September, 1991.

BY THE COURT:

SHERMAN G. FINESILVER, Chief
Judge
United States District Court

SUPREME COURT, STATE OF COLORADO

ORDER OF COURT

IN re the MARRIAGE OF

Ruth M Hopkins

and

THOMAS C HOPKINS,

Petitioner,

and concerning

EDWARD G. SCHAUMBERG III.,

Respondent.

Upon consideration of the Request to Docket the Petition for Writ of Certiorari filed by Thomas C. Hopkins in the above cause, and now being sufficiently advised in the premises.

IT IS THIS DAY ORDERED that Absent an Affidavit concerning the Movant's financial affairs, the Request to Docket the Petition herein without a docket

fee shall be, and the same hereby is, DENIED.

BY THE COURT, SEPTEMBER 6, 1991.

COLORADO COURT OF APPEALS

No. 91CA1186

ORDER OF COURT

IN re the Marriage of

Ruth M. Hopkins Petitioner,

and

THOMAS C HOPKINS Appellant,

and concerning

EDWARD G. SCHAUMBERG III Appellee.

Having considered the Response to this Court's Order of August 2, 1991, the Appeal is dismissed without prejudice.

BY THE COURT, AUGUST 22, 1991.

Pierce,J; Hume,J. Ruland,J

Appendix D

COLORADO COURT OF APPEALS

No. 91CA1186

ORDER TO SHOW CAUSE
Tr. Ct. No. 84DR690

In re the Marriage of

Ruth M. Hopkins Petitioner,

and

THOMAS C HOPKINS Appellant,

and concerning

EDWARD G. SCHAUMBERG III, Appellee.

TO: THOMAS C. HOPKINS, Appellant pro-se

From a review of the file herein, it appears that the docket fee was not paid when the notice of appeal was filed.

IT IS THEREFORE ORDERED that Appellant shall show cause, if any there is, in writing on or before August 23, 1991, why this Appeal should not be

dismissed without prejudice for failure to pay the docket fee.

BY THE COURT:

NEY,J.

Dated: August 2, 1991

DISTRICT COURT, COUNTY OF ARAPAHOE

STATE OF COLORADO

CASE NO. 84DR690, DIVISION 11

ORDER RE: OBJECTION TO ORDER

IN re the Marriage of:

Ruth M. Hopkins,

Petitioner,

and

THOMAS C HOPKINS,

RESPONDENT.

This matter comes before the Court on Respondent Thomas C. Hopkins objection to order as prepared by Edward G. Schaumberg III, Guardian ad Litem. It also comes on based on Petitioner, Ruth M. Hruska's letter to the Court regarding her involvement in the proceedings of Thomas C. Hopkins against Edward Schaumberg. The Court entered an Order

regarding both the Petitioner and the Respondent.

This matter came on for hearing on Respondent's objection to the fees of the Guardian ad Litem. The Respondent was present pro-se. The Guardian ad Litem, Edward G. Schaumberg III appeared. The Petitioner, Ruth M. Hruska did not appear.

The Court heard the testimony of the Respondent, statements to the Court, statements of the Guardian ad Litem and entered findings and Order. The Court indicated for the record that the Court did not have any extra judicial relationship with Mr. Schaumberg.

The Court finds that Mr. Schaumberg's $50 per hour is a low rate. The standard rate for attorneys of this caliber are between $100 and $150 an hour. The Court finds that $50 per hour is reasonable.

The court has reviewed the affidavit of the Guardian ad Litem, considered

the testimony of the Respondent and makes the following findings: Mr. Schaumberg was unable to see the minor child for a period of time due to the distance of the Petitioner. The Court finds the time that Mr. Schaumberg spent on this case was reasonable and necessary, and the fact that Mr. Schaumberg was unable to heal the relationship betwen the minor child and the Respondent is unfortunate. Mr. Schaumberg was faced with a very difficult problem and did the best he could under the circumstances.

The Court specifically finds that Mr. Schaumberg does not have a conflict of interest in this case.

Mr. Schaumberg is entitled to reasonable and necessary attorney's fees for the hearing held on July 3, 1991. The Court found in open court that the bills were reasonable and necessary, and that the parties would share equally

in the payment of the Guardian ad Litem.

Based on the letter from Ms. Hruska in regard to this matter, the Court finds that Ms. Hruska does not wish to be involved in the dispute over attorney's fees with Mr. Schaumberg; that Ms. Hruska has paid $394.50 on April 15, 1991.

The Court finds that Ms. Hruska should not be liable for any expense concerning disputes between Mr. Hopkins and Mr. Schaumberg.

It is therefore the Order of Court that any balance due caused by the hearing or preparation for the hearing on July 3, 1991, shall be the sole responsibility of Thomas C. Hopkins.

Thomas C. Hopkins shall also be liable for his share of Edward Schaumberg's Guardian ad Litem fees for all services rendered.

DONE IN CHAMBERS this 28th day of August, 1991.

JOYCE S. STEINHARDT, DISTRICT COURT JUDGE

THE CONSTITUTION OF THE UNITED STATES

AMENDMENT TO THE CONSTITUTION

ARTICLE XIV, SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

THE CONSTITUTION OF THE UNITED STATES

AMENDMENT TO THE CONSTITUTION, ARTICLE IV

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

THE CONSTITUTION OF THE UNITED STATES

AMENDMENT TO THE CONSTITUTION, ARTICLE IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

THE CONSTITUTION OF THE UNITED STATES

AMENDMENT TO THE CONSTITUTION, ARTICLE I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievances.

RULES OF THE SUPREME COURT

RULE 38 (a)(b)

FEES

In pursuance of 28 U.S.C §1911. the fees to be charged by the Clerk are fixed as follows:

(a) For docketing a case on a petition for Writ of Certiorari or on appeal or docketing any other proceeding, except a certified question or a motion to docket and dismiss an appeal pursuant to Rule 18.5, $300.00

(b) For filing a petition for rehearing or a motion for leave to file a petition for rehearing, $200.00

RULE 39 (.1)

PROCEEDING IN FORMA PAUPERIS

.1. A party desiring to proceed in forma pauperis, together with the party's notarized affidavit or declaration (in compliance with 28 U.S.C §1746) in the form prescribed by the Federal Rules

of Appellate Procedure. Form 4. See 28 U.S.C. §1915. If the United States district court or the United States Court of Appeals has appointed counsel under the Criminal Justice Act of 1964, as amended. The party need not file an affidavit or declaration in compliance with 28 U.S.C. §1746, but the motion must indicate that counsel was appointed under the Criminal Justice Act.. See 18 U.S.C §3006A(d)(6). The motion shall also state whether or not leave to proceed in forma pauperis was sought in any other court and, if so, whether leave was granted.

RULE 33 (.7)

.7 The Clerk shall not accept for filing any document presented in a form not in compliance with this Rule, but shall return it indicating to the defaulting party any failure to comply.

The filing, however, shall not thereby be deemed untimely provided that the new and proper copies are promptly substituted. If the Court finds that the provisions of this Rule have not been adhered to, it may impose, in its discretion, appropriate sanctions including but not limited to dismissal of the action, imposition of costs, or disciplinary sanction upon counsel.

14-10-116. Representation of child. The court may , upon the motion of either party or upon its own motion, appoint an attorney to represent the interests of a minor or dependent child with respect to his custody, support, and visitation. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against any or all of the parties; except that, if the responsible party is indigent, the costs, fees, and disbursements shall be borne by the state.

Source; R & RE.L. 71, p. 527, §1; C.R.S. 1963, §46-1-16; L. 73, p.554, § 8.

Cross references: For the duty of

the public defender to represent indigents, see § § 21-1-103 to 21-1-105.

Law reviews. For article. "The Role of Children's counsel in contested Child Custody, Visitation and Support Cases", see 15 Colo. Law. 224(1986).

Attorney should practice in county of child's residence. If the court, in exercise of its discretion, appointed an attorney to represent these minor children, it is obvious that in terms of client access and the mitigation of expenses, any attorney so appointed should be practicing in the county where the child is residing. Bacher V. District Court, 186 Colo. 314, 527 P.2d 56 (1974).

Applied in IN re Parker, 41 Colo. 287, 584 P.2d 103 (1978); IN re Conradson, 43 Colo.App. 432. 604P.2d 701; Deeb V. Morris, 14 B.R. 217 (D. Colo. 1981); IN re Koltay, 646P.2d 405(Colo.App. 1982).